

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, October 13, 2010 – 12:00 P.M.
Room 319, Heber M. Wells Bldg.
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Ralph Astorga, President, USWA Local 392
Thomas Bingham, President, Utah Manufacturers Association
David Bird, Esq.
Jeff Rowley, Risk Manager, Salt Lake County
Ray Pickup, Workers Compensation Fund
Brian Kelm, Esq
Brandt Goble
K. Dawn Atkin, Attorney
Reo Castleton, President, SL Cnty Fire Dept Local 1696
Edward Holmes, M.D., Summit View Medical

The following Advisory Council members were excused:

Dave Davis, President, Utah Food Industry Association
Kathleen Bissell, Liberty Mutual
Rep. Mike Morley

The following Advisory Council members were absent:

Brad Tibbitts, Utah State Insurance Department
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter
Sen. Karen Mayne

Others Present:

Alan Hennebold, Deputy Commissioner
Ron Dressler, Director, Division of Industrial Accident, Labor Commission
Sara Danielson, Administrative Assistant, Labor Commission
David Lamb, Administration Director, Labor Commission
Linda Duval, Claims Manager, Industrial Accidents Division, Labor Commission
Dennis Lloyd, Workers Compensation Fund
Patrick Lane
Rod Morris, Deloitte Consulting
Elena Bensor, Community Relations Manager

WELCOME

Welcome –Commissioner, Sherrie Hayashi brought the meeting to order at 12:00 p.m.

1. Miscellaneous Business – Commissioner Hayashi

Commissioner Hayashi presented the minutes from the last Council meeting for approval. Tom Bingham moved that the minutes be approved. Brian Kelm seconded the motion. Voting was unanimous in the affirmative.

2. Workplace Safety Account – Elena Bensor

Elena Bensor distributed a handout indicating to whom the grants were awarded. She stated that approximately \$623,000 was awarded. **Dave Bird** asked if reports were filed as to the expenses of the programs. **Elena** stated that each grantee is required to submit quarterly reports as to the expenses of the programs.

3. Labor Commission Budget/Premium Surcharge Funds – David Lamb / Deloitte Consulting

Dave Lamb passed out several handouts regarding the UEF, ERF and Workplace Safety Account expenses. Mr. Lamb provided an explanation of the handouts and answered general questions.

Rod Morris, from Deloitte Consulting, passed out a copy of his PowerPoint presentation regarding the findings of Deloitte Consulting on the Premium Surcharge Funds. Mr. Morris reviewed the process Deloitte used to determine the percentages. Mr. Morris explained that the changes in the UEF reserves are the result of three large head injury claims and more awareness in the community of the UEF. Discussion was had regarding why there was such a difference between projections and actual numbers. Deloitte recommends that for the 2011 calendar year the Premium Surcharge rates be set at 3.0% for the ERF and .25% for the UEF. Further discussion was had regarding the recommended rates.

Jeff Rowley made a motion for the Commission to do the following:

1. Speak with the Tax Commission regarding issues why the Premium Base times the rate does not equal the amount of money deposited into the various funds and the process of collecting and remitting the funds to the Commission.

2. Work with Deloitte on the UEF rates, so that the UEF is funded but not overly flush.

And

3. Move forward on getting Legislative authority to change the ERF rate to 3% until at least 2017.

Dave Bird seconded the motion. The voting was unanimous in the affirmative.

Dawn Atkin made a motion for the Commission to proceed with rule making to set the Premium Surcharge rates for the 2011 calendar year at: 3.0% for the ERF; .05% for the UEF; .25% for the Workplace Safety Account; and .5% for the IARA. **Tom Bingham** seconded the motion. Voting was unanimous in the affirmative.

4. Workers' Compensation Legislation and Rule-Making

Report to Business & Labor Interim Committee regarding workers' compensation survivors' benefits.

Alan Hennebold handed out a draft response to the Business & Labor Interim Committee regarding workers' compensation survivors' benefits. He reviewed the response and explained that at the end, the Commission made two recommendations: 1) that the death benefit provision that are scattered throughout the Workers' Compensation Act, be consolidated into one or two sections (does not need to be handled immediately – could be done next year); and 2) that the Commission take action to “get the word out” that benefits can continue after 312 weeks with proof of dependency. Discussion was held.

Dave Bird made a motion to approve the response with a reworking of the last recommendation to make the Commission not look like it was not doing its job. **Dawn Atkin** seconded the motion. Voting was unanimous in the affirmative.

Legislation regarding limited liability companies, independent contractors and inter-agency enforcement council.

Alan Hennebold passed out the draft legislation proposed by Senator Mayne regarding multi-member limited liability companies and an inter-agency enforcement council. The legislation would move the

housing of the database to the Commission from the Dept. of Commerce, since all aspects of the Commission deal with limited liability companies. Alternatives amendments to the Workers Compensation Act; 1) all members of LLC's are presumed to be employees, the companies would have to prove they are not; and 2) the setting a blackline below which they are not employees and above which they are employees. Discussion was held. **Dave Bird** made a motion that the Commission go on record as favoring workers' compensation coverage for all workers. **Tom Bingham** seconded the motion. Voting was unanimous in the affirmative.

The question was posed – Should the Commission move forward with legislation to change the Workers Compensation Act to deal with limited liability companies? Discussion was held. **David Bird** made a motion to go forward with alternatives one and two with the caveat that alternative two allows for a treeing effect of LLC's. Further discussion was held. **Commissioner Hayashi** stated that the Labor Commission would work on developing legislation for consideration at the January Advisory Council meeting.

Electronic filing.

Alan Hennebold reported that the Commission is moving forward with that effort.

Extension of insurance coverage for injured workers' medical care – Dawn Atkin

Dawn Atkin handed out a draft of proposed legislation. She explained that regular medical insurance carriers are denying coverage until the issue of Workers' Compensation is determined. Discussion was held. **Dawn Atkin** stated that they will move forward and return at the January meeting for support of an actual bill.

Statutory minimum payments for permanent total disability compensation – Dawn Atkin

Dawn Atkin handed out proposed a statutory change in the Permanent Total Disability law. She explained that an argument has been present for the first time in hearings by the ERF; that the minimum payment increases do not apply to injuries prior to 1988. Discussion was held. Concerns were raised as to the impact this change would have on the ERF. **Dawn Atkin** withdrew this matter from consideration at this time. She stated that she would get more information on the impact and then bring the matter back to the council.

5. Other Business

Commissioner Hayashi stated that the next meeting would be on January 12, 2011, at 11:30 am for lunch and the meeting would begin at 11:45 am.

Commissioner Hayashi adjourned the meeting at 2:10 pm.